

COMMISSIONERS APPROVAL

ROKOSCH

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GRANDSTAFF

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THOMPSON

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CHILCOTT

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DRISCOLL

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PLETTENBERG (Clerk & Recorder)

Date: September 20, 2007

Members Present.....Commissioner Jim Rokosch,  
Commissioner Carlotta Grandstaff, Commissioner Alan Thompson, Commissioner Greg  
Chilcott and Commissioner Kathleen Driscoll

Minutes: Glenda Wiles

The Board met with Planning Director Karen Hughes and Planner Shaun Morrell in regard to a decision on the contracts with DTM, Geum and the Sonoran Institute for the process and outreach of countywide zoning.

Karen indicated she would like formal action on the Sonoran Institute contract by the Commissioners. She is waiting on CDBG funds for the contract with DTM Group. There are some federal requirements for the use of the CDBG funds and the Planning Staff will make sure everything is in order before they sign the contract.

Shaun stated in regard to the Sonoran Institute he has reviewed these contracts as has the Administrative Director, Skip Rosenthal and Civil Counsel Alex Beal. Commissioner Grandstaff asked about the public's perception of Sonoran Institute. Karen stated this process is focused on details and not the overall zoning issues.

**Commissioner Grandstaff made a motion to contract with the Sonoran Institute for the public process portion of the 'outreach for countywide zoning'. Commissioner Driscoll seconded the motion.** Commissioner Thompson stated he has some concerns about having them tell the county how to run the meetings and build consensus.

Commissioner Grandstaff stated the upside is that this helps the planning staff with their time and assists them in training for meeting facilitation. Karen stated until they have a planning consultant in place, this gives them services for assisting her staff in the facilitation of the meetings. She hopes to utilize some of the Brainerd funds they will also be receiving for these meetings. Commissioner Thompson stated the public process is important as it will limit the county's exposure for this issue of zoning. Commissioner Rokosch stated this brings in professional expertise, not only assisting the planning staff, but to help train the staff while moving the countywide issue forward. **All voted "aye".**

In regard to the DTM and Geum contract proposals, Karen stated they can continue seeking the information they need for use of CDBG funding. She can then make the necessary technical changes bringing those contracts back to the Commissioners for discussion and final decision. Commissioner Chilcott noted he wants to make sure they have sufficient funding if they enter into these contracts. Karen noted Alex had reviewed the DTM contract at an earlier date.

Commissioner Grandstaff asked how these contracts fit into the over all planning consultants' pool. Karen noted most of the consultants recognize the data pieces are already being worked on.

**Commissioner Chilcott made a motion to approve the DTM and Geum Contract contingent upon the CDBG funding with no significant changes in the contract and with Civil Counsel's review. Commissioner Grandstaff seconded the motion.** Commissioner Thompson stated as long as the funds are there and to make sure the contract is appropriate. Shaun stated the only change might be some shifting of hourly tasks, otherwise the contract will stay the same. Karen stated in order to utilize federal funds there must be certain provisions in the contract that would allow the county to use those funds. Advertising and equal opportunity provisions of the contract must be adhered to. She hopes to utilize some of the Brainerd funds for the Geum contract. Other issues for streamside setback and GIS can be addressed as well as the countywide zoning issue. **All voted "aye".**

Minutes: Beth Perkins

The Board met to discuss the next steps of the Streamside Setback Interim Zoning. Present were Planning Director Karen Hughes, Planner Vanessa Perry, Floodplain Administrator Laura Hendrix and numerous members of the community.

Commissioner Rokosch reviewed the agenda asking for a Planning Staff Report.

Karen gave the Planning Staff Report. She stated there are recommended steps to move forward. She gave a recap of events leading up to this point in time. The Streamside Setback Committee worked hard to create a proposal by September 7<sup>th</sup>. The Interim Zoning Proposal for regulations was presented. Karen reviewed the proposal with the Board. (See Attached).

Karen stated the first thing that needs to happen is to have clarification from the Board. First is the priority of this project and a resource commitment to administration of zoning. Karen explained how she has prioritized the Planning Department workload. Karen asked the Board to help prioritize the Interim Zoning. She explained they will have to define the state of emergency and to be sure they are on the right track towards addressing the specified emergency. She further discussed the other processes to be discussed today.

Commissioner Rokosch requested Board discussion about the next steps for processing the interim zoning proposal. Commissioner Thompson reiterated the agenda and the flow of the meeting.

Commissioner Chilcott stated it's great to see this many people interested in a topic. Countywide Zoning is also an important subject. He requested they please show their interest in the Countywide Zoning.

Commissioner Grandstaff stated the Board needs to discuss the resource commitment. Karen suggested having a meeting with the Board to discuss it. Commissioner Grandstaff asked if Karen has given any thoughts about it. Karen replied they would have to reduce Staff support for Open Lands Board, Streamside Setback Committee, and two other Planning based boards to prioritize Interim Zoning.

Commissioner Rokosch stated the Brainerd Foundation has approved some funding to address the issues of the staff workload. He requested community matching funds to reach those goals. Karen replied the Brainerd Foundation funds were allocated toward Countywide Zoning. Karen reviewed funding and expenditures and possibilities with the Board.

Commissioner Thompson stated under the emergency zoning it talks about basic structures. He requested reviewing the emergency zoning focusing on the structures. Karen replied she agrees. Having a clear sense of what is the emergency would give a scope of direction to follow.

Commissioner Driscoll stated she has reviewed the proposal in depth. She stated they are dealing with structures and houses being built too close to the river. In her opinion that would define an emergency.

Commissioner Grandstaff suggested letting the Planning Department define what they can do and then address that. Commissioner Chilcott stated the citizens decided on November 7<sup>th</sup>, 2006, that the number one priority is zoning based on density. He felt the Board has asked our Planning Staff to do the impossible. He thinks the emergency defined by our citizens is real. He believes the priority is countywide zoning. He'd rather do each job right than two jobs 'just ok'. He stated he believes it is untimely requesting the Planning Department to make this a priority. He suggested combining Streamside Interim Zoning with Countywide Zoning Phase 2. Commissioner Grandstaff stated the Commissioners asked the Committee to bring forth a proposal and they did. She stated the Board shouldn't just say to never mind their request now.

Commissioner Rokosch stated his background is in agricultural water. He understands the importance of this issue. Commissioner Driscoll stated the Board needs to look at this and determine how important it is to the community

Karen stated streamlining the process may make it easier to get a set of regulations for review. It will still take time and a long time commitment. It may affect other high priority items. She requested direction from the Board. Commissioner Rokosch suggested taking the time and discussing it at another meeting. Commissioner Grandstaff asked how much staff commitment was to the Streamside Setback Committee. Vanessa replied they meet twice a month. She also stated Laura Hendrix has been requested to serve on several subcommittees.

Commissioner Thompson stated at some point legal counsel will have to be consulted. Karen replied they talked about having legal counsel in the process of creating the draft document.

Commissioner Thompson stated he felt the next step should be that Planning involve legal counsel in the draft process. Karen replied that would depend on when the draft could be done as they need to have a public meeting.

Commissioner Rokosch opened the floor for public comment.

David Marquette stated he appreciates the opportunity to speak about the process. He addressed the big workload ahead for the Planning Department. He spoke about agricultural laws that will conflict with the Interim Zoning. He suggested researching those laws prior to issuing a draft as he believes there are some serious conflicts with those laws.

Robin Ross-Duggin felt streamlining along with augmenting would be a good path to follow. She stated there was some misinformation regarding a previous meeting, and what came to light was the need for some language to allow people to feel comfortable. She believes people are lacking knowledge of this issue.

Janie Summers stated the Committee invited the public to attend this meeting. She did attend a lot of those meetings. However, the Committee members did not contact the local members.

Harvey Hackett stated he has farmed and irrigated west of Victor. He also served on the Clark Fork Basin Task Force. That Task Force created a report that has answers to water rights. The report should have been available since 2004.

Jennie Stoddard stated it is important to understand the need for setbacks. Interim Zoning has to have an emergency. Just because there is a half a dozen houses built on the river does not constitute an emergency. We have a plan to be zoned by next year.

Larry Campbell stated he would like the process for the emergency declaration as soon as possible. He has seen several new houses being built along the river to beat out the zoning.

Chris Daniel stated the public needs to be involved in the process.

Marilyn Saunders stated she has received notice of meetings and thanked the Board.

John Crowley stated he does not feel the Streamside Set Back Committee (SSC) has a good agricultural representative. The people are looking for some direction from the Board. He felt the Commissioners have the horse before the cart.

Paul Martini stated Karen did a tremendous job. He wondered why irrigation users were not represented on the SSC. Regarding the public hearing meeting, he asked if they would have a chance to speak with the Board about these matters. He would like to see a little more education on this matter.

Sarah Rubik stated she is in support of the interim zoning. The Board has created the draft and the draft needs to be moved forward. They were asked to put this together for a reason.

Lyle Pilon stated without water, there is not one person who would be here (be able to live). Making a living from agriculture and construction is a conflict of interest. It is of conflicting interest. He said the valley has to be shared and we need to leave something for the future generations by having respect for them.

Rosemary Newman stated what happened to the floodplain? Only a portion of the flood plain is mapped.

Tony Mecos stated at this moment he feels there is no emergency. He asked if they could not enforce the flood plain as it is now, how we can enforce the interim zoning. We should let the river itself determine the interim zoning.

Steve Blanovich stated he believes this issue is moving too fast. He asked how they could be sure they are getting all the information. It doesn't matter if a house is 20 feet or 200 feet away from the river.

DeAnne Harbaugh stated she has been involved in land use policies for several years. She felt they need to do protective planning which means protective setbacks. Private property owners do not have the right to do whatever they want with their property. Which means they do not have the right to impose on others. You have to have stream setbacks to protect wildlife.

Terry Ryan stated she is for fair setback regulations. She would like to see good science and facts to support those regulations.

Russ Thomas asked about the funds for streamside setbacks. Commissioner Rokosch replied there have been funds that came in from the Brainerd Foundation. Karen replied Brainerd Foundation funding is to the Bitterroot Land Trust and it outlines a comprehensive planning program.

Tony Mecos stated nobody despises the development of homes on the floodplain of the river more than him. He hopes the basis of the emergency will be scientific.

Ted Newman stated he would like to know the definition of an intermittent stream. Karen replied there are several definitions but there is one included in the draft.

Lyle Pilon asked Karen what the time frame will be in comprehensive zoning. Karen replied they will pursue zoning in 'uses'. Lyle stated the process is taking longer than anticipated.

Sarah Rubik asked Commissioner Driscoll where she could find information regarding the funds from the Brainerd Foundation. Commissioner Driscoll replied the Bitterroot Land Trust. John Ormiston stated the Bitterroot Land Trust's role in this process is as an accountant. There are procedures set up to ensure they have the 'dollars to plan'.

Commissioner Rokosch stated the Board recently adopted the Budget for FY 2008. Requests were 1.7 million over the budgeted amount, and this is a problem of funds.

DeAnne Harbaugh asked if this has been declared as an emergency. Commissioner Driscoll replied it is still to be discussed.

Brian Glenn stated Planning Staff is at maximum capacity. The emergency is a Phase 2 item and we are at Phase 1 item.

Katherine Smith stated there has been a lot of talk about an emergency. It is a semantic issue. She believes it should be wrapped into the planning process as a whole. Water is the lifeline of the valley. Whether it is an emergency or not, it is important to deal with it.

Commissioner Rokosch closed public comment.

Commissioner Rokosch requested a motion to adopt the suggested procedure provided by the Planning Department. Commissioner Grandstaff stated she is not ready to make a motion at this time. Commissioner Driscoll stated these people put a lot of work into this draft to just discard it. She wants this taken seriously and to make sure the Board follows through. Commissioner Rokosch stated the Board has discussed the realm of final adoption, and they need to clarify the definition of emergency. What the Board is looking at will provide for additional public comment. Karen added one suggestion would be to adopt item one and based on the outcome of that, move forward. Commissioner Grandstaff agreed with Karen. She stated the Board requested the Streamside Setback Committee to provide this proposal and they should follow it through.

Commissioner Thompson stated they need to 'pare' this down to talk about buildings in a particular area. He doesn't want to mess with water or ditch rights. He felt the local law needs to address this or the state will. He also stated if they need to look at agriculture, then do it.

Commissioner Chilcott stated if the county completed this by February 09, they would be ahead of the State. He discussed his reasoning and being an affected landowner.

Commissioner Grandstaff stated if they hashed it out with the Planning Department, they could come up with something workable.

**Commissioner Grandstaff made a motion to move forward and adopt procedure process number 1. Commissioner Driscoll seconded the motion, all voted 'aye'.**

Minutes: Glenda Wiles

The Board met with Dan Ritter, District Ranger of the Stevensville Ranger District, Sue Heald, Planning Staff Officer, and Sandy Mack, Project Leader of the Stevensville Ranger District in regard to the release of a proposed action for Travel Management Planning. Dan stated this is a 'kick off' for their environmental analysis which is due the end of December, 2009. These changes will be for summer and winter motorized recreation use on specified roads, trails, and areas within the non-wilderness portion.

Key objectives to this plan include providing quality motorized and non-motorized recreation opportunities while protecting the natural resources; clarification and simplification of motor vehicle use designations; and keeping these changes within the forest plan for consistency. Dan noted the time frames for these proposed changes are as follows:

- Fall 2007 – Release of Proposed Action and November Public Meetings
- Summer 2008 – Draft Environmental Impact Statement
- Summer 2009 – Final Environmental Impact Statement and decision
- Winter 2009 – Produce New motorized Vehicle Use Map

He noted public comment will be accepted on this action plan until November 23, 2007.

Commissioner Thompson asked if this proposal dovetails the roadless issue that was proposed over a year ago to the Governor. He stated he spent countless hours on this issue as well as other citizens, giving the information to the Governor, but understood the Governor never gave the information to the U.S. Secretary of Agriculture.

Discussion included the fact that this proposed action is separate and different than the roadless issue the county addressed with the Governor.

Sandy noted there is some confusion by the general public on the designated routes for motorized and non-motorized use. This proposed action plan will take the confusion out of what roads can and cannot be utilized by motorized vehicles.

Commissioner Grandstaff asked if this plan will be reviewed every few years or will this plan be set in stone. It was noted any decision can be adjusted at a later date by additional NEPA work. It was also noted the plan could also obliterate some of the existing roads.

In other business the Board met to discuss rescinding the resolution for the Open Burning Restrictions placed upon Ravalli County lands. Present was OES Ron Nicholas who visited with Fire Chief Ron Ehli (who is also a Fire Chief Council Member) and they want to follow the Forest Service which is lifting all the restrictions. Ron stated some fire chiefs feel it is too early. Commissioner Chilcott stated it is confusing and they have always paralleled the Forest Service. Commissioner Grandstaff stated the National Weather Service recommends not lifting the burn ban as there is going to be some more warm weather. Glenda stated this is not forest service land, we are in urban interface and the fire hazard is real to those of us who live there. She urged the Commissioners not to rescind the Resolution. Ron stated he likes consistency but he certainly understands the fear. Commissioner Driscoll agreed to go with Stage 1. Commissioner Thompson stated we have always followed Forest Service so he would have no problem following their lift of the burn ban.

**Commissioner Chilcott made a motion to lift all fire restrictions in order to be consistent with the Forest Service. Commissioner Thompson seconded the motion. Commissioner Rokosch, Commissioner Chilcott, and Commissioner Thompson voted "aye". Commissioner Grandstaff and Commissioner Driscoll voted "nay". Motion carried. (See Resolution No. 2183).**



**BCC MEETING**  
**SEPTEMBER 20, 2007**  
**1:30 P.M.**

**Subject: Next Steps for Streamside Setback Interim Zoning Proposal**

1. Staff report
  - a. Background – How we got to this point
  - b. Proposal for Interim Zoning – A Brief Overview
  - c. What are the next steps for the processing of this proposal? (see attached suggestions from staff)
2. BCC discussion about next steps for processing the interim zoning proposal
3. Public Comment about next steps for processing the interim zoning proposal
  - a. Time limit for comments
  - b. Subject – limited to the processing of the interim zoning proposal, not the proposal or streamside setbacks in general
4. BCC decision about next steps for processing the interim zoning proposal
5. BCC sets meeting(s) to address the first step in the process (?)
6. Public comment regarding items not on the agenda

## **PROCESS ONLY TO BE DISCUSSED TODAY**

### **SUGGESTED PROCEDURE FOR PROCESSING THE STREAMSIDE SETBACK INTERIM ZONING** *(Timetable will depend on the priority level for this project, the procedure and availability of Planning Department resources.)*

1. BCC clarifies the three items below (will require at least one subsequent public meeting)
  - a. Relative priority of the project in terms of:
    - i. Preparing a draft for public hearing
    - ii. Resource commitment to administration of zoning
  - b. What is the specific nature of the emergency?
  - c. Is the current proposal generally on the right track towards addressing the specified emergency?
2. Assuming that getting a draft ready for a public hearing is deemed a high priority, the following steps are suggested to be completed by the Planning Department:
  - a. Conduct thorough review of the proposal based in part by the BCC input from the previous step
  - b. Write administration and enforcement provisions
  - c. Collect and incorporate agency comments
  - d. Work with legal counsel to incorporate their suggestions
  - e. Provide a new public review draft and submit to Planning Board and Streamside Setback Committee for their consideration and comments
3. BCC conducts a public meeting and adopts a Resolution of Intent to Adopt Interim Streamside Setback Zoning
  - a. Initiate public review
    - i. Legal notice
    - ii. Printing of drafts and distribution
    - iii. Transmittal of public review draft to interested agencies and boards, including the Streamside Setback Committee and the Planning Board (Boards can conduct their own meetings to review the proposal and provide comments to the BCC)
4. BCC conducts a public hearing to consider the interim zoning proposal

## **RAVALLI COUNTY STREAMSIDE PROTECTION SETBACK INTERIM ZONING**

### **SECTION 1. TITLE**

These regulations shall be known and shall be cited as the Ravalli County Interim Streamside Zoning Regulation Concerning Construction and Other Activities Near Streams and Rivers

### **SECTION 2. AUTHORITY**

These regulations are adapted pursuant to Sections 76-2-201 through 76-2-228, MCA, and are adopted as Interim Zoning Regulations pursuant to Section 76-2-206 MCA, in response to the emergency existing in Ravalli County as defined below.

### **SECTION 3. PURPOSE**

The purpose of this Interim Streamside Setback Zoning Regulation is to manage the construction of permanent structures and certain other activities adjacent to streams and rivers in Ravalli County.

### **SECTION 4. INTENT**

The intent of this Interim Setback Zoning Regulation is to prevent permanent, dire, irreversible consequences to public health and safety, water quality, stream stability, flood flow heights, views, and fish and wildlife habitat resulting from construction and certain other activities adjacent to streams and rivers in Ravalli County while Ravalli County completes development of a permanent Streamside Setback Zoning Regulation.

### **SECTION 5. JURISDICTION**

These regulations shall apply to all unincorporated areas in Ravalli County Montana. These regulations do not apply to Federal and State lands located within the County.

### **SECTION 6. DEFINITIONS**

**Agricultural Uses:** Grazing and cropping to produce food, feed and fiber commodities, including the use of all equipment normally used for such purposes, including motorized equipment. "Agricultural uses" does not include permanent residential structures, barns, sheds, corals or other permanent structures. Fencing to control livestock is considered an agricultural use.

**Existing Structure**

Any permanent structure, or any part thereof, in existence on the effective date of this regulation.

**Impervious Surfaces:** Any paved, hardened or structural surface, which does not allow for infiltration of precipitation at a rate equal to the infiltration rate of surrounding, undisturbed areas.

**Intermittent stream:** A stream or reach of a natural stream that normally flows for only part of the year in a well defined, natural channel.

**Irreversible Damage**

Damage resulting from construction, excavation, removal of vegetation and other activities within the setback that cannot be reasonably mitigated because of technical or financial considerations and is therefore considered permanent.

**Natural Pond:**

Any naturally occurring water body within the riparian area not defined as a wetland. Water bodies created by excavation or by construction of dams or other water retention structures are not considered natural ponds.

**100 Year Flood:** A flood magnitude which has a one (1) percent chance of being equaled or exceeded in any given year, commonly referred to as a base flood

**100 Year Floodplain:** The area of land that would be inundated by water of a 100-year flood. The 100-year floodplain consists of a floodway and a flood fringe.

**Ordinary High Water Mark:**

The line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to, deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value.

**Perennial Stream:** A stream or reach of a natural stream that, under normal precipitation conditions, flows throughout the year. Streams dewatered during part of the year by irrigation or other withdrawals, but which would flow through the year without said withdrawals, are perennial streams.

**Permanent Structure:** Construction of any kind, including those of earth or rock, including but not limited to residential structures, barns, pavement, garages, outbuildings and other structures considered to have a useful life of 10 years or longer as defined by the Federal Tax Code depreciation schedule.

**Process of Construction:**

A residential structure is determined to be in the process of construction if there is either an existing foundation, wastewater treatment system and well in the ground on the effective date of this Regulation, or a valid permit has been secured that specifies the location of the foundation, wastewater treatment system and well on the effective date of this Regulation.

**Residential Structure**

Any structure completed or in the process of construction, intended for human occupancy. Mobile homes and modular homes are considered residential structures. Motor homes, tent, cabins, campers and similar structures shall be considered residential structures if occupied for more than a total of 30 days during each calendar year this Regulation is in effect.

**Riparian Area**

Area adjacent to water containing and defined by plant communities contiguous to and affected by surface and subsurface hydrologic conditions associated with perennial or intermittent lotic and lentic water bodies and as further defined by the U.S. Fish and Wildlife Service publication "A System for Mapping Riparian Areas in the Western United States, 1998)

**Setback:** An area adjacent to a stream where certain uses and activities are prohibited or controlled. Setback distance shall be measured from the ordinary high water mark on each stream bank and shall extend an equal distance on each side of said stream.

**Buffers Zones:** Buffer zones are not additional setback distances, but rather the portion of the setback that is designated to remain relatively undisturbed. For the purposes of this interim setback regulation, buffer zones and/or setbacks can be used interchangeably. Subsequent regulations may include both buffer zones and setbacks.

**Variance**

Use or activity approved by the Ravalli County Board of Adjustments that specifically permits deviation from the streamside setback requirements and restrictions included in this Regulation.

Wetland

Those areas that are inundated or saturated by surface or ground water at a frequency and sufficient duration to support a prevalence of vegetation typically adapted for growth and survival in saturated soils and as additionally defined by the U.S Army Corps of Engineers Wetland Delineation Manual (U.S Army Corps of Engineers Environmental Laboratory, 1987).

## SECTION 7. SETBACK REQUIREMENTS

Class 1 Stream: Shall be the main stem of the Bitterroot River extending Northward from the confluence of the West Fork and the East Fork of the Bitterroot to the Ravalli County line and all wetlands and natural ponds that occur within the associated riparian area. Setback shall correspond to the regulatory 100-year floodplain as defined by FEMA but shall be, as a minimum, 200 feet on either side of the outermost stream channel, wetland or natural pond as measured from the ordinary high water mark.

Class 2 Stream: Shall be the entire reach of the East Fork and of the West Fork of the Bitterroot River extending from their confluence upstream to the headwaters and all wetlands and natural ponds that occur within the associated riparian area. Setback shall extend 150 feet on both sides of the stream, wetland or natural pond as measured from the ordinary high water mark.

Class 3 Stream: Shall consist of all streams in Ravalli County, except those streams included in Class 1 and Class 2, draining an area equal to or greater than 25 square miles and all wetlands and natural ponds occurring within the associated riparian area. Setback shall be 100 feet on each side of the stream, wetland or natural pond as measured from the ordinary high water mark. Class 3 Streams shall consist of the following streams as identified on United States Geologic Survey topographic maps:

## Tributaries of the West Fork of the Bitterroot River:

- Hughes Creek
- Overwhich Creek
- Blue Joint Creek
- Piquett Creek
- Nez Perce Creek
- Boulder Creek
- Trapper Creek

## Tributaries of the East Fork of the Bitterroot River:

- Moose Creek
- Meadow Creek
- Cameron Creek
- Tolan Creek
- Camp Creek
- Warm Springs Creek

## Tributaries of the main reach of the Bitterroot River:

- Chaffin Creek
- Tin Cup Creek
- Rock Creek
- Rye Creek
- Burke-Harlan Creek
- Sleeping Child Creek
- Skalkaho Creek
- Gird Creek
- Lost Horse Creek
- Roaring Lion Creek
- Sawtooth Creek
- Blodgett Creek

Mill Creek  
 Fred Burr Creek  
 Bear Creek  
 Sweathouse Creek  
 Big Creek  
 Willow Creek  
 Willoughby-Spooner Creek  
 Burnt Fork Creek  
 Kootenai Creek  
 Ambrose-Three Mile Creek  
 Bass Creek  
 Sweeny Creek  
 Eight Mile Creek

**Class 4 Stream:** Shall consist of all perennial streams, except those listed above as Class 1, 2 and 3 streams, located in Ravalli County having a drainage area of less than 25 square miles and all wetlands and natural ponds occurring within the associated riparian areas. Setback shall be 75 feet on each side of the stream, wetland or natural pond as measured from the ordinary high water mark.

**Class 5 Stream**

All intermittent streams not included in Class 1 through Class 4 above and all wetlands and natural ponds occurring within the associated riparian area. Setback shall be 50 feet on each side of the stream, wetland or natural pond as measured from the ordinary high water mark.

**SECTION 8. PERMITTED USES AND ACTIVITIES**

The following structures, uses and activities are permitted within the setback area as defined in Section 7. No use or activity permitted under these Regulations shall be interpreted as allowing trespass on private property.

**Subdivisions:**

All subdivisions for which designated setbacks, no build/alteration zones or building envelopes were approved by the Ravalli County Board of County Commissioners prior to the effective date of this Regulation. Subdivisions approved without designated setbacks, no build/alteration zones or building envelopes shall be subject to all conditions contained in this Regulation.

**Nonconforming Existing Structures**

All existing structures, including residential structures and associated amenities, such as lawns, gardens, outbuildings and picnic areas. This shall include all structures normally associated with commercial production of agricultural products, such as barns, corrals and fencing, and structures required for all other commercial enterprise existing on the effective date of this regulation. Roads, trails, bridges, headgates, culverts, utilities and other structures existing on the effective date of this Regulation are considered nonconforming existing structures.

**Expansion and Replacement of Nonconforming Existing Structures**

Reconstruction, repair or expansion of residential structures and other structures existing on the effective date of these Regulations so long as the footprint of the new construction is no more than 50 % larger, up to a maximum of 1000 square feet larger, than the footprint of the structure on the effective date of this Regulation. Expansion of nonconforming existing structures shall be allowed one time during the period this Regulation is in effect unless a Variance is granted by the Ravalli County Board of Adjustments.

**Existing Structure Maintenance and Repair**

Normal maintenance and required repair to an existing structure and associated landscaping, including but not limited to lawn cutting using mowing equipment, bridges and associate components; roadways but only

to bring them up to "as new" standards; and culverts; irrigation ditches and associated controls, at the time of enactment of this regulation except as otherwise stated herein.

Agricultural Uses

All agricultural uses and activities on lands assessed as agricultural lands for tax purposes.

Pastures and Corrals

Pastures, corrals and other uses normally associated with maintenance of livestock located within the setback on lands not assessed as agricultural lands for tax purposes existing on the effective date of this Regulation.

Weed Control

Activities to control noxious weeds in accordance with guidelines of the Ravalli County Weed Management District. Herbicide may be used for control of noxious weeds so long as said herbicide is applied in strict accordance with the Product Label and the Management District's Rules.

Recreational Activities

Passive recreational activities such as fishing hunting, hiking, picnicking, and similar uses so long as said uses and activities do not include the use of motorized vehicles or results in irreversible damage within the setback.

Fire Protection

Removal of vegetation reasonably required to protect personal property from the threat of wildfire.

Streamside Construction and Maintenance:

All activities done under a valid 310 permit issued by the Bitterroot Conservation District.

Access to Irrigation and Other Waters

Access to the setback for the purpose of diverting water for irrigation and other purposes, such as for recreational or wildlife use, when the diversion is under a valid Water Right issued by the State of Montana and in accordance with all conditions contained therein. This shall include reasonable access and construction within the setback when said access and construction does not result in permanent and irreversible damage within the setback and is carried out in accordance with a 310 permit or other applicable permits.

Irrigation and Other Water Uses:

Irrigation of pasture or cropland located within the setback or use of water for recreational, wildlife or other purposes authorized under a valid Water Right.

**SECTION 9. PROHIBITED USES AND ACTIVITIES**

All uses and activities not listed in Section 8 are prohibited unless a variance is obtained from the Interim Streamside Setback Zoning Board of Adjustment. Prohibited uses and activities shall include, but are not limited to:

New Structures

Construction of permanent structures including residential structures, commercial and industrial structures and outbuildings, roads, bridges, water diversion structures, utilities and all other construction not specifically authorized under a valid 310 permit.

Wastewater Treatment Systems

New septic tanks, drain fields, septic lines or other structures design to treat or discharge sewage or other waste products unless performed under a valid Permit issued by Ravalli County prior to the effective date of this Regulation.

**Impervious structures**

Construction of impervious structures such as parking lots, roads and equipment or materials storage areas.

**Removal of Vegetation**

Vegetation within the setback shall not be disturbed or removed except as reasonably required by permitted uses and activities as set forth in Section 8.

**Motorized Vehicle Use**

All motorized uses within the setback is prohibited except as reasonably required by permitted uses and activities as set forth in Section 8.

**Artificial Stream Bank Protection**

All construction and activities intended to prevent normal stream migration and bank erosion, except the use of natural vegetation, unless done under a valid 310 permit. Artificial protection includes placement of rock (rip rap), gabions, cement slabs and similar materials and all other methods used to confine or limit the natural migration of streams.

**SECTION 10. OTHER APPLICABLE REGULATIONS**

Where this Regulation imposes a greater restriction upon uses and activities within setbacks than is imposed by other Federal, State or other Ravalli County Regulations including the Ravalli County Growth Policy, these Regulations shall apply. In cases where Federal, State or other County Regulations are more restrictive, the more restrictive Regulation shall apply.

**SECTION 11. VARIANCES**

Property owners or their designated representative may seek variances from the requirements of this Regulation by written application to the Ravalli County Board of Adjustments. The Board may approve a variance only if positive or non applicable findings are made on each of the following criteria, based on substantial credible evidence.

- There exists no reasonable alternative location on the owners property for the prohibited use or activity outside of the setback, and
- The variance will not adversely affect upstream or downstream hydraulic conditions, and
- The variance will not adversely affect private property located upstream or downstream from the proposed construction or activity, and
- Construction of residential structures and other improvements that cannot be reasonably accommodated without access to and/or crossing the setback. However, in no case shall construction or disturbance associated with construction within the setback be less than 50 feet as measured from the ordinary high water mark, and
- Granting of the variance does not violate existing Federal, State or County Regulations, and
- Enforcement of these Regulations would result in unreasonable hardship to the Owner as determined by the Ravalli County Board of Adjustments based on all information submitted to the Board by the property owner or their representative and
- Granting of the Variance does not permanently and adversely affect the health, safety and/or welfare of the residents of Ravalli County.



#### **SECTION 12. INTERIM STREAMSIDE SETBACK ZONING BOARD OF ADJUSTMENTS**

The Ravalli County Board of County Commissioners shall provide for a Board of Adjustments which will be responsible for review of Applications for Variance submitted in accordance with Section 11 of this Regulation.

#### **SECTION 13. ENFORCEMENT**

This Regulation shall be enforced by the Ravalli County Planning Department??

#### **SECTION 14. VIOLATIONS AND PENALTIES**

Penalties for Prohibited Uses and Activities carried out within the streamside setback zone without compliance with the provisions of Section 11, VARIANCES, shall be:

- Removal of structures at the expense of the owner
- Repair of damage caused by construction and other activities defined in SECTION 9 at owner's expense
- Any construction of residences and other permanent structures, including but not limited to, excavation or site preparation for construction of said structures, within the setback zone without a valid drain field permit, where applicable, will be subject to fines of up to \$1000.00 per day of violation.
- A Misdemeanor Offense punishable by up to 6 months in the Ravalli County Jail and/or a fine of up to \$500. Each day that the Prohibited Uses and Activities occur constitutes a separate violation.
- Other penalties that are presently applicable or that may be defined and approved by authority of Federal, State or County Government during the term this Regulation is in effect.